IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 20, 2004 Session

STATE OF TENNESSEE, DEPT. OF HUMAN SERVICES, ex rel. BRENDA LEACH HADLEY-REDD v. MORRIS MURPHY HADLEY

A Direct Appeal from the Chancery Court for Tipton County
No. 1631 The Honorable Martha B. Brasfield, Chancellor

No. W2002-00458-COA-R3-CV - Filed February 23, 2004

In the final decree of divorce, husband was ordered to pay child support. Husband relocated out of state. When wife located husband, she filed a UIFSA petition seeking recovery of child support arrearages, which was transferred to Louisiana. Husband then filed in this Court a petition for declaratory judgment that wife's petition is barred by the statute of limitations. The trial court ruled that wife's petition is barred by the ten-year statute of limitations in T.C.A. § 28-3-110 (2000). Wife appeals. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which DAVID R. FARMER, J. and HOLLY M. KIRBY, J., joined.

Paul G. Summers, Attorney General and Reporter; Warren Jasper, Assistant Attorney General, Nashville, For Appellant, State of Tennessee Department of Human Services

No appearance for Appellee

OPINION

Brenda Leach Hadley-Redd ("Mrs. Hadley" or "Respondent") and Morris Murphy Hadley ("Mr. Hadley" or "Petitioner") were married on November 4, 1959 in Tipton County, Tennessee[1] and divorced September 18, 1975.[2] The couple's union produced three children, all of whom were adults at the time of this appeal.

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[1] At the time of this appeal, Mrs. Hadley was a Tennessee resident, and Mr. Hadley was a resident of the State of Louisiana.

[2] Mrs. Hadley filed a Motion for Default Judgment, and a final decree was filed September 18, 1975.

The pertinent, undisputed facts of this case are recited in Mrs. Hadley's Statement of the Evidence, filed in the trial court on March 25, 2002, which we quote:

> COMES NOW the Assistant District Attorney General on behalf of the Plaintiff and submits the following Statement of the Evidence:
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> 1) The parties in this matter were married in Tennessee on November 4, 1959. There were three (3) children born to this marriage: on November 27, 1960, Morris Franklin Hadley, on April 29, 1964, Mark Nathan Hadley, and on November 8, 1968, Gary Wayne Hadley.
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> 2) By order entered September 18, 1975, the parties were divorced in the Chancery Court of Tipton County, Tennessee. Mr. Hadley was ordered to pay $200.00 per month in child support and pay all medical, dental, and hospital bills incurred by the children. Defendant failed to make timely child support payments and had not assisted in the payment of any medical, dental, or hospital bills. An arrearage of $23,927.51 existed at the time of these proceedings. The arrearage has never been reduced to judgment.
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> 3) After numerous attempts to locate the Defendant beginning in 1978, the Child Support Office was able to locate the Defendant on or about August, 1999 and a [Uniform Interstate Family Support Act ("UIFSA")] Petition was filed March 16, 2000, in Louisiana. The Plaintiff had only requested child support arrearage, even though the Defendant has not assisted in the payment of any medical, dental, or hospital bills.
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> 4) The State of Louisiana continued the case until Tennessee made a ruling on the arrearage.
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> 5) On July 16, 2001, the Defendant filed a Petition for Declaratory Judgment in the Chancery Court of Tipton County, Tennessee.
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> 6) On September 4, 2001, the Defendant filed a Motion for Default Judgment and Notice of Hearing in the Chancery Court of Tipton County, Tennessee, due to the Plaintiff, [Mrs. Hadley], having failed to file an answer. The hearing was held September 13, 2001, at which time the Plaintiff, [Mrs. Hadley], requested a continuance

in order to obtain an attorney or to contact the Child Support Office. The Court granted [Mrs. Hadley's] request.

7) On October 11, 2001, the State filed an answer and a Request for Production of Documents in the Chancery Court of Tipton County, Tennessee.

8) On November 8, 2001, the Defendant filed a Motion to Strike the Answer filed by the State as being filed untimely.

9) On December 21, 2001, the State filed a Motion to Compel Discovery.

10) The hearing on all issues was held January 10, 2002, at which time the Court denied the Defendant's Motion to Strike. The Court heard oral argument from counsel for the State and counsel for the Defendant. The matter was then taken under advisement.

11) The Court ordered the parties to meet in a conference room so that the State could obtain the information requested in discovery. In conference, the Defendant admitted that he has resided at approximately 10 to 12 different addresses in the Baton Rouge, Louisiana area since 1976.

12) The order of the Court was rendered January 31, 2002.

On July 16, 2001, Mr. Hadley filed a Petition for Declaratory Judgment to declare Mrs. Hadley's petition barred by the ten-year statute of limitations, as set out in T.C.A. § 28-3-110 (2000). Mr. Hadley's petition noted that the couple's youngest child reached the age of majority on November 8, 1986. Accordingly, Mr. Hadley asserts that "the collection of the alleged arrearage is barred by the statute of limitations found in T.C.A. § 28-3-110, in that more than ten (10) years passed after the child reached majority prior to plaintiff initiating the UIFSA action." Mr. Hadley's petition further alleged:

In 1997, the Tennessee General Assembly enacted 1997 Public Acts 551, codified as T.C.A. § 36-5-103(g), which provides that "judgments for child support for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time." This statute was effective July 1, 1997.

Section 36-5-103(g) cannot be applied to defendant's situation in that the youngest child had reached majority more than ten years prior to the enactment of § 36-5-103(g) and therefore defendant had

> a vested right under Tenn. Const. Art. I, § 20 to rely on the statute of limitations found in § 28-3-110.
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> Plaintiff's UIFSA petition is further barred by the doctrine of laches in that more than twenty years passed from the entry of the divorce decree prior to plaintiff seeking to enforce the terms of that decree.

On September 4, 2001, Mr. Hadley filed a Motion for Default Judgment, seeking entry of a default judgment against Mrs. Hadley on grounds that she failed to "plead or otherwise make defense" to his Petition for Default Judgment within thirty days of service of this pleading. A hearing on Mr. Hadley's motion was set for September 13, 2001. This hearing was eventually postponed until January 10, 2002. On October 11, 2001, the State of Tennessee, Department of Human Services ("State"), filed an Answer to Mr. Hadley's petition on Mrs. Hadley's behalf, denying petitioner's allegations and asserting that the applicable statute of limitations never vested because Mr. Hadley's child support arrearage was never reduced to judgment. The State's Answer further alleged that "the statute of limitations and laches cannot be applied where the party is fleeing the court." Mr. Hadley's motion to strike the answer because of late filing was denied by court order entered February 20, 2002.

A hearing on Mr. Hadley's Petition for Declaratory Judgment was held on or about January 10, 2002. By Order entered January 31, 2002, the trial court granted Mr. Hadley's petition, finding that "any petition filed by Mrs. Brenda Hadley-Redd for child support arrearages under the decree entered in this court on September 18, 1975, is barred by the statute of limitations [set forth in T.C.A. § 28-3-110,] and cannot be revived per enactment of T.C.A. § 36-5-103(g)."

Mrs. Hadley filed a timely Notice of Appeal and presents for review the sole issue of "[w]hether the trial court erroneously granted Mr. Hadley's petition for declaratory judgment by applying the statute of limitations of T.C.A. § 28-3-110 to Mrs. Hadley and the State of Tennessee for the claim of child support arrears." We note that Mr. Hadley did not file an appellate brief with this Court.

Mrs. Hadley's brief states that the trial court erred for three reasons:

> First, the statute of limitations of Tennessee Code Annotated 28-3-110 does not apply to child support arrears that have not been reduced to a judgment. Secondly, in 1997, the Tennessee Legislature enacted Tennessee Code Annotated 36-5-103 (g) which prevents any statutes of limitation from applying to child support orders. Lastly, statutes of limitation do not apply to the State of Tennessee unless expressly stated.

The facts are not in dispute but the real issue involves statutory interpretation, which is a question of law for the Court. Therefore, the standard of review is ***de novo*** without any presumption of correctness of the trial court's conclusions of law.

The trial court's ruling granting Mr. Hadley a declaratory judgment is best summarized by the following excerpt from the court's January 31, 2002 order:

> Mr. Hadley had a vested right in his defense that the action on the child support was barred by the ten-year statute of limitations. The ten-year statute of limitations expired, at the latest, on November 30, 1996. Thus, the amendment to T.C.A. § 36-5-103(g) cannot be applied in such a manner as to impair his right to rely upon the statute of limitations. In other words, T.C.A. § 36-5-103(g) cannot operate retroactively to revive an expired judgment or the expired obligation of Mr. Hadley.

T.C.A. § 28-3-110(2) (2000) establishes a ten-year limitations period for the commencement or enforcement of any "[a]ctions or judgments and decrees of courts of record of this or any other state or government." Pursuant to this section, the limitations period begins to run upon the accrual of a party's cause of action.

Essentially, Mrs. Hadley argues that the child support orders not reduced to judgments are not subject to the ten-year statute of limitations provided for in § 28-3-110 (2). She cites in support of such argument ***Anderson v. Harrison***, No. 02A01-9805-GS-00132, 1999 WL 5057 (Tenn. Ct. App. Jan. 7, 1999), and ***Attaway v. Attaway***, E2000-01338-COA-R3-CV, 2001 WL 378744 (Tenn. Ct. App. Apr. 16, 2001) . Mrs. Hadley states, however, that in ***Anderson***, this Court noted that if the child support arrearages have been reduced to judgment, the action must be brought within the period of the statute of limitations. She also cites in support of her argument this Court's decision in ***Frye v. Frye***, E2000-02123-COA-R3-CV, 2001 WL 839039 (Tenn. Ct. App. July 24, 2001) and also asserts that, by virtue of T.C.A. § 36-5-103 (g), there is no statute of limitations for child support payments. T.C.A. § 36-5-103 (g) provides:

> Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

In ***Frye, supra***, the Court determined that the ten-year statute of limitations period began running on the date the custodial parent obtained the judgment, noting:

> When the statute of limitations period begins to run depends on whether the child support arrearages have been reduced to judgment for a sum certain. If a party is seeking to enforce an

> ongoing order for child support and the arrearages have not been reduced to judgment for a sum certain, then the statute begins to run when the last child support payment is supposed to have been made, which typically is when the child reaches the age of majority. ***See In re Estate of Meader***, No. 03A01-9707-CH-00252, 1997 WL 672205 (Tenn. Ct. App. Oct. 30, 1997). In those cases where the arrearages for child support have been reduced to judgment for a sum certain, the custodial parent is required to bring the action for enforcement within ten years of obtaining the judgment. ***Anderson v. Harrison***, No. 02A01-9805-GS-00132, 1999 WL 5057, at *3 (Tenn. Ct. App. Jan. 7, 1999) (citing ***Vaughn v. Vaughn***, 1988 WL 68062, at *4 (Tenn. Ct. App. July 1, 1988)).

Id. at *2.

The court further considered plaintiff's argument that T.C.A. § 36-5-103(g) applied to save his lawsuit. ***Id***. at *3. The court, in reliance upon ***County of San Mateo, California v. Green***, No. M1999-00112-COA-R3-CV, 2001 WL 120729 (Tenn. Ct. App. Feb. 14, 2001), held that "the enactment of T.C.A. § 36-5-103(g) cannot operate retroactively to revive plaintiff's otherwise expired judgment for a sum certain for attorney fees taxed as child support." ***Id***. at *4.

In view of the above authorities, we are obliged to decide in the instant case whether the child support obligation has been reduced to judgment and, if so, when, and then to determine if T.C.A. § 36-5-110 (g) is applicable. As to the first question, we refer to T.C.A. § 36-5-101 (a)(5) (Supp. 2003):

> (5) Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state. Such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date upon which the ordered support is due, the unpaid amount is in arrears and shall become a judgment for the unpaid amounts and shall accrue interest from the date of the arrearage at the rate of twelve percent (12%) per annum. All interest which accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

T.C.A. § 36-5-101 (a)(5) was enacted by the legislature as Chapter 39, Public Acts of 1987, Section 1, and became effective March 27, 1987, when signed by the governor.

In ***Mitchell v. Johnson***, No. M2002-00231-COA-R3-CV, 2003 WL 22251335 (Tenn. Ct. App. Oct. 2, 2003), this Court considered the effect of T.C.A. § 36-5-101 (a)(5), stating:

> One clear result of this enactment was to remove from the courts the discretion to forgive or reduce past arrearages. ***Rutledge v. Barrett***, 802 S.W.2d 604, 606 (Tenn. 1991). It also had the effect of removing the availability of traditional equitable defenses to enforcement actions, including laches. ***Id***. 802 S.W.2d at 607. Finally, as the language makes clear, support orders became judgments enforceable as any other judgment. As a consequence, such judgments were "subject to the defenses applicable to judgments generally." ***Bloom v. Bloom***, 769 S.W.2d 49, 492 (Tenn. Ct. App. 1988).

Id. at *4. ***See also In Re Estate of James C. Meader***, 03A01-9707-CH-00252, 1997 WL 672205. (Tenn. Ct. App. Oct. 30, 1997). ("We think that, absent a clear legislative mandate, child support judgments are subject to the defense of the statute of limitations as is 'any other judgment.'") ***Id.*** at *2.

The statute is clear and unambiguous and it is our duty to interpret the statute in a manner to carry forth the legislature's intent. ***Perrin v. Gaylord Entm't Co.,*** 120 S.W.3d 823, 826 (Tenn. 2003) (citing ***Parks v. Tenn. Mun. League Risk Mgmt. Pool***, 974 S.W.2d 677, 679 (Tenn. 1998)). The plain language of the statute indicates that the legislature intended, just as the Court in ***Meader*** stated, that child support judgments are subject to the same defense of the statute of limitations as any other judgment. We also believe that our conclusion is fortified by the legislature's subsequent action in eliminating the statute of limitations for child support obligations. It is apparent to this Court that the legislature recognized that its effort, by virtue of T.C.A. § 36-5-101 (a)(5) to expedite and improve efforts to assure responsibility for child support obligations, could lead to an untoward result; therefore, the 1997 legislation resulting in T.C.A. § 36-5-110 (g) was passed.

Therefore, considering the plain wording of the statute, the child support order in the instant case became a judgment on March 27, 1987 and was subject to be barred by the statute of limitations on March 27, 1997. T.C.A. § 36-5-103 (g), providing for no statute of limitations for child support obligations, became effective July 1, 1997. Thus, the child support obligation was barred prior to the time the exclusion statute became law.

Tenn. Const. art. I, § 20 provides that "no retrospective law, or law impairing the obligations of contracts, shall be made." Thus, laws which attempt to impair vested rights acquired under the existing laws are not allowed. ***See Morris v. Gross***, 572 S.W.2d 902 (Tenn. 1978). When the statutory limitation has run, the defendant has a vested right in that statute of limitations "and, therefore petitioners had a right to expect under the prior law that they would not be sued; but, if sued, they were assured of a perfect defense." ***Ford Motor Co. v. Moulton***, 511 S.W.2d 690, 697 (Tenn. 1974).

In ***Wyatt v. A Best Products Co., Inc.***, 924 S.W.2d 98 (Tenn. Ct. App. 1995), this Court said:

> When a cause of action is barred by a statute of limitations, enforced at the time the right to sue arose and until the time limitation expired, the right to rely upon the statute as a defense is a vested right that cannot be disturbed by subsequent legislation.

Id. at 103.

In the instant case, the statute of limitations of ten years expired March 27, 1997, and the legislation, eliminating the statute of limitations as a defense, did not become effective until July 1, 1997 and thus cannot be applied retroactively to remove the vested right of the defendant.

The Attorney General, on behalf of the Mrs. Hadley, next asserts that the statute of limitations, T.C.A. § 28-3-110, cannot be applied because such limitations do not apply to the state that is acting in its sovereign capacity, absent express language to the contrary. We first note that this issue was not raised in the trial court. Issues not raised or complained of in the trial court will not be considered on appeal. ***See Tamco Supply v. Pollard***, 37 S.W.2d 905, 909 (Tenn. Ct. Appl 2000). However, we will briefly address the question.

The state presented the same argument in ***Mitchell v. Johnson,*** M2002-00231-COA-R3-CV, 2003 WL 22251335 (Tenn. Ct. App. Oct. 2, 2003), where this Court said:

> Thus, the State can have one of two roles in an action to enforce a child support order. Any applicant for or recipient of public assistance is deemed to have assigned to the State any rights to support from any other person. Tenn. Code Ann. § 71-3-124(a)(1). This assignment includes only those rights "which have accrued at the time such assignment is executed," which is defined as the date of any payment of public assistance. Tenn. Code Ann. § 71-3-124(a)(1)(B) and (a)(2). Further, "During the terms of such assignment, the department shall be subrogated to the rights of the child or children or the person having custody to collect and receive all child support payments." Tenn. Code Ann. § 71-3-124(a)(3). In that situation, the State may initiate a support action in its own name or in the name of the recipient to recover payments ordered by the courts. Tenn. Code Ann. § 71-3-124(a)(4). The department is required to certify to the appropriate court clerk that an assignment has been made. Tenn. Code Ann. § 71-3-124(b). When the State obtains subrogation rights under this procedure, it is arguable that the State is then proceeding in its own interests and is acting in a sovereign capacity.

> The other role sometimes assumed by the State is to provide assistance in enforcing support orders, generally legal representation, to persons who have not applied for or received AFDC payments, but who have "otherwise applied for child or spousal support services pursuant to the provisions of subdivision (1) of Title IV-D of the Social Security Act." Tenn. Code Ann. § 71-3-124(c)(2). The IV-D program required the states to provide custodial parents with legal assistance in collecting child support, whether such parents were the recipients of AFDC support or not. ***State ex rel. Norfleet v. Dobbs***, No. 01A01-9805-CV-00228, 1999 WL 43260, at *3 (Tenn. Ct. App. Feb. 1, 1999) (no Tenn. R. App. P. 11 application filed). Where a parent has not assigned his or her rights by receipt of public assistance, the State's role is limited to providing legal representation. This is accomplished through contracts between the department and either a governmental agency, such as a district attorney's office, or a private contractor. ***See Baker***, 1997 WL 749452, at *1 n.2. In this situation, the department or its contractors "may file such legal actions without the necessity of intervening in an existing action or naming the state as a party to the action." Tenn. Code Ann. § 71-3-124(c)(2).
>
> Where the State has not provided AFDC support, the parent is not required to assign to the State his or her interest in ordered child support. In that situation, the State is not a true party in interest with rights of its own to enforce. It is merely providing legal services representing the parent's interest. Consequently, the State's exemption from the application of statutes of limitation does not apply.

Id. at *7.

In the case before us, the record does not indicate that any rights of Mrs. Hadley were assigned nor that she ever received AFDC support.

In summary, although the trial court premised its conclusion on the bar of the ten-year statute of limitations for the period of ten years after the youngest child reached its majority, we believe that the triggering date would be March 27, 1987, when the child support order became a judgment pursuant to the action of the legislation. This Court will affirm the trial court's judgment if it finds that the trial court reached the correct result irrespective of the reasons stated. ***Wood v. Parker***, 901 S.W.2d 374 (Tenn. Ct. App. 1995).

Accordingly, the judgment of the trial court is affirmed and the case is remanded for such further proceedings as may be necessary. Costs of the appeal are assessed to the appellant, Brenda Leach Hadley-Redd and her surety.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.